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12 *Attorneys for Snow Covered Capital, LLC*

13 **UNITED STATES DISTRICT COURT**  
 14 **DISTRICT OF NEVADA**

15 SNOW COVERED CAPITAL, LLC,  
 16  
 17 Plaintiff,

18 vs.

19 WILLIAM WEIDNER, ANDREW FONFA,  
 20 DAVID JACOBY, and LUCKY DRAGON LP,  
 21  
 22 Defendants.

Case No.: 2:19-cv-00595-APGNJK

**STIPULATION AND ORDER  
 REGARDING SNOW COVERED  
 CAPITAL'S PRE-FORECLOSURE  
 DAMAGES AND THE CALCULATION OF  
 THE BORROWER'S INDEBTEDNESS**

23 This Stipulation is entered into by and among Plaintiff Snow Covered Capital, LLC  
 24 ("SCC"), Defendant William Weidner, and Defendant Jodi Fonfa, as executrix to decedent estate  
 25 of Andrew S. Fonfa (collectively, the "Defendants", and together with SCC, the "Parties"), by and  
 through their respective undersigned counsel, as follows:

26 WHEREAS, on May 3, 2016, SCC entered into a Construction Loan Agreement with Lucky  
 27 Dragon, LP, a Nevada limited partnership ("LD LP"), whereby SCC agreed to loan LD LP  
 28 \$30,000,000 pursuant to a Secured Promissory Note (Construction Loan) and \$15,000,000 pursuant

1 to a Secured Promissory Note (Line of Credit) (collectively the “Notes”). The Notes contain an  
2 attorneys’ fees provision.

3 WHEREAS, repayment of the Notes was secured by a Construction Deed of Trust (With  
4 Assignment of Leases and Rents, Security Agreement and Fixture Filing) (the “Deed of Trust”)  
5 which encumbered real property located at 300 West Sahara Avenue, Las Vegas, Nevada, then  
6 known as the Lucky Dragon Hotel & Casino (the “Property”).

7 WHEREAS, Defendants executed and delivered a Recourse Obligations Guaranty (the  
8 “Guaranty”) which was triggered when LD LP filed for bankruptcy.

9 WHEREAS, the Property to be sold to SCC at an October 30, 2018 nonjudicial foreclosure  
10 sale (the “Foreclosure Sale”).

11 WHEREAS, the trial in this case will be held from February 26, 2024 through March 8,  
12 2024.

13 WHEREAS, the trial will address the issues of both the indebtedness (including any pre-  
14 foreclosure damages claimed by SCC) and the fair market value of the Property on and through the  
15 date of the Foreclosure Sale in order to determine any deficiency amount, if any.

16 WHEREAS, the Parties have met and conferred regarding the indebtedness issue, and  
17 regarding the categories and amounts of the pre-foreclosure damages SCC will be seeking at the  
18 forthcoming trial.

19 WHEREAS, the Parties desire to stipulate to the amounts of each category of pre-  
20 foreclosure damages that the Court should include in the calculation of indebtedness in order to:  
21 (a) avoid the expenses associated with bringing expert witnesses to the trial; (b) reduce the length  
22 and complexity of the trial; (c) avoid incurring additional legal fees associated with further litigating  
23 the amount of certain categories of damages; and (d) generally promote judicial economy.

24 NOW, THEREFORE, based on the foregoing and subject to Court approval, the Parties  
25 hereby agree as follows:

26 1. The Parties hereby stipulate to the following categories and amounts of damages, all  
27 of which the Parties agree fall within the “indebtedness” for the purposes of this action (collectively  
28 the “Stipulated Indebtedness”):

CATEGORY	AMOUNT
Appraiser Fees (Valuation Consultants and Houlihan Lokey)	\$50,895.63
Consulting Fees (Michael Brunet)	\$70,149.00
Title and Foreclosure Fees	\$40,312.70
Transfer Taxes (NRS 375.010 et. seq.)	\$178,500.00
PDS Lien Settlement	\$1,636,550.00
Real Property Taxes	\$634,298.00
Principal and Interest	\$54,900,000.00
Pre-Foreclosure Receiver's Fees	\$250,000.00
Stipulated Attorneys' Fees and Costs (ECF No. 322 and 323)	\$1,430,000.00
Payment to LD LLC for FF&E	\$10,000.00
<b>TOTAL</b>	<b>\$59,200,705.33</b>

2. The Parties agree that the Stipulated Indebtedness includes the entire amount of indebtedness (including any claimed pre-foreclosure damages, such as any consequential or other alleged asserted damages) and that neither party will attempt to offer evidence at trial to expand upon or limit the Stipulated Indebtedness. Further, SCC agrees not to offer or argue that there are any other pre-foreclosure damages other than those agreed upon in the Stipulated Indebtedness.

3. This Stipulation reflects a compromise regarding the amounts set forth above and shall not be construed as an admission or concession as to the validity of any portion of the Stipulated Indebtedness.

4. In light of this Stipulation, the Parties' expert witnesses, Scott Leslie and Paul Regan, will not offer testimony in this phase of the trial and their designations as trial witnesses in the Joint Pretrial Order are withdrawn from this phase of the trial;

5. The Stipulation conclusively settles the amounts of those SCC's damages listed in paragraph 1, provided that nothing herein shall be construed as a determination of the interest rate, the proper calculation of interest, and/or the amount of interest to be charged in the post-foreclosure period should the Court find any deficiency.

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6. Except as otherwise provided herein, this Stipulation shall not prejudice SCC's argument that it is entitled to post-foreclosure damages against Defendants pursuant to the Guaranty, other applicable agreements among the Parties, Nevada's deficiency judgment statutes, or other applicable law. Defendants dispute that any deficiency exists and also dispute that any additional damages (post-foreclosure or otherwise) are available to SCC pursuant to the Guaranty, other applicable agreements among the Parties, Nevada's deficiency judgment statutes, or other applicable law. Nothing in this Stipulation shall prejudice defendants' arguments that SCC is foreclosed from recovering post-foreclosure damages.

7. Nothing contained herein shall prejudice the right of SCC to allege that it is entitled to recover additional attorneys' fees and costs incurred in any period following the Foreclosure Sale pursuant to, among other things, the Guaranty and/or Federal Rule of Civil Procedure 54;

8. Nothing contained herein shall prejudice the right of the Parties to seek to introduce any evidence that any Party believes to be relevant to the value of the Property on the date of the Foreclosure Sale.

9. Nothing contained herein shall prejudice any arguments available to Defendants in this case.


10. Nothing contained herein shall prejudice the right of the Defendants to oppose any request of SCC that it is entitled to recover any damages, attorneys' fees, and costs it incurred in any period following the Foreclosure Sale.

11. For the avoidance of doubt, nothing herein is intended to modify in any way the Court's Orders dated March 10, 2022 (ECF No. 243) and July 15, 2022 (ECF No. 264);

**IT IS SO STIPULATED.**

DATED this 27<sup>th</sup> day of February 2024.

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DATED this 27<sup>th</sup> day of February 2024.

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DATED this 27<sup>th</sup> day of February 2024.

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**ORDER**

The Court having considered the foregoing Stipulation between the Parties, and good cause appearing,

**IT IS HEREBY ORDERED** that the Stipulation is approved; and

**IT IS SO ORDERED.**

  
DISTRICT COURT JUDGE

DATED: Feb. 27, 2024